



SPECIAL
COLLECTIONS
DOUGLAS
LIBRARY



QUEEN'S UNIVERSITY
AT KINGSTON
Presented by

KINGSTON ONTARIO CANADA

A N
A D D R E S S
TO THE
PEOPLE OF ENGLAND:
BEING THE
PROTEST of a PRIVATE PERSON
Against every SUSPENSION OF LAW
that is liable to injure or endanger
PERSONAL SECURITY.

WHEREIN IS SHEWN

That the Claim of *personal Protection and Relief* from *unjust Imprisonment*, “ BY DUE PROCESS OF THE “ LAW,” (and that “ WITHOUT DELAY,”) is a “ COMMON RIGHT,” so indispensably due to all *innocent Persons*, that it cannot be set aside, or withdrawn from any that are so, (who demand it,) without fundamentally subverting the political *Constitution*, or *legal Establishment* of these Kingdoms, and thereby rendering the Advisers and Promoters of such a Measure guilty of *HIGH-TREASON*!

“ *It is the Duty of every Individual whatsoever to aid PEACE and PUBLIC JUSTICE,*” — agreeable to a MAXIM of the Law — “ *UNUSQUISQUE PACI ET JUSTITIÆ PUBLICÆ TENETUR SUCCURRERE.*”

“ *Those Men, who set aside*” (or suspend) “ *the Law of the Land, do thereby incur a perpetual Stain of Infamy!*” — For it is a fundamental MAXIM of the Constitution — “ *LEGEM TERRÆ amittentes perpetuam infamiae notam inde merito incurunt.*”

L O N D O N:
PRINTED IN THE YEAR
M.DCC.LXXVIII.

AC911.1778.S56

TO THE
PEOPLE OF ENGLAND.

COMMON CHARITY will induce us to believe that the advocates for an occasional *suspension* of the *Habeas Corpus* laws are not really aware of the dangerous tendency of such a measure; and therefore when the author of this Protest (in the following pages) charges the advisers and promoters of the suspension with “*high-treason against the king and state;*” he professes to aim the severity of his censure chiefly against *the measure itself*, (in order to express the *real danger* and *malignity* of its effect,) rather than against the *persons* of those men who, inadvertently, or through inattention to the *fundamental* or *indispensable principles of law*, have promoted

it: and therefore to *those* persons, jointly with all the other People of England, (as being equally interested with the rest in the effects of such a measure) the author of this Protest now addresses himself, not to promote a spirit of vengeance and personal resentment, but merely for the purposes of warning and instruction to *all parties*, that they may cordially unite in restoring the *due limitations* of government, on which depends the common safety both of king and people.

The Advocates for an occasional *suspension of the law*, perhaps, will alledge, that the new *temporary* powers (whatever they may happen to be) which would thereby be thrown into the hands of the persons intrusted with the administration of government, are by no means intended to take effect against *the People of England*, that are resent *in this island*, but only against such persons as have

have been guilty of treason in foreign parts (in America, let us suppose, for instance) or on the high seas, or for piracy; and therefore they conceive, that the free inhabitants of this island could not be injured by so limited a suspension of the laws, especially if they should admit in their bill an additional clause of limitation, proposed even by an opposite party, by way of security; which we will suppose to be couched in the following terms, *viz.* “That nothing herein is intended, or shall be construed, to extend to the case of any other prisoner or prisoners than such as shall have BEEN OUT OF THE REALM AT THE TIME OR TIMES OF THE OFFENCE OR OFFENCES wherewith he or they shall be charged, or of which they shall be suspected.” Such a clause as this seems, on a slight examination, to secure the inhabitants of this island from the danger of an *unlimited* power, against which

which all true Englishmen ought to be ever upon their guard: but, alas! so dangerous is it to stop the ordinary course of *justice* and *common right*, or to alter the "*due process of the law*," in any cases whatsoever wherein *personal liberty* (the highest and most valuable *temporal object* of Englishmen) is concerned, that, if we should *suppose* the case of such a *suspension of the laws* as courtiers in general would endeavour to obtain, were they to be intrusted with *the compiling of a bill* for that purpose, and then carefully compare the said *supposed bill* with the abovementioned *clause of limitation*, we should soon have reason to be convinced that the security of the latter is only *imaginary*; and that multitudes of his majesty's *innocent and peaceable subjects* would be still liable to be oppressed, and be denied the benefits of *public justice* and *common right*, by such a *suspension of law*, if they should happen to

to incur the displeasure of persons in power, or be misrepresented to them by any secret enemy.

The proposed clause leaves unprotected all the nobility, gentry, and other persons whatsoever, that have made any excursions into *France, Italy, Germany, Flanders, &c.* or even to *Ireland*, ever since the commencement of the troubles (whatever they might be) which occasioned an *imaginary necessity*, or plea, for SUSPENDING THE LAWS. And this, perhaps, might be extended three or four years back, and might thereby exclude from the protection of the limiting clause a great multitude of the most respectable people of the kingdom, who might happen to have travelled abroad during such a period. Neither does the clause protect the merchants, traders, and other persons, that have arrived from the West-Indies, Ireland, or any other country,

country, within such a supposed period. And they are, surely, too numerous and respectable a body to be thus *outlawed!*

Add to this, that all *seafaring Persons* without exception (though they are the most valuable subjects of this maritime state) would be left unprotected by such a clause, and of course would be rendered subject to the *unlimited WILL of man*, (ARBITRIUM *hominis*, which is the true definition of ARBITRARY POWER,) instead of LAW! And, lastly, all other persons whatsoever are liable to suffer the same inconveniences, if they have not kept a diary, or have not memory or memorandums, to enable them to produce sufficient evidence of their being actually WITHIN THIS REALM at any period of time that might be fixed upon within the last three or four years; so that not only persons "*seized and taken OUT OF THE REALM*" would be made liable to the

the effects of such a *suspending act*, but all the other persons abovementioned, though they are actually RESIDENT WITHIN THE REALM.

In order to state the case for my argument as clearly as I am able, I have here supposed the adoption of such a *suspending bill* as we might naturally conceive to be proposed by any set of men in power, who are warmed by the sunshine of court-favour till they forget that their own real interest is inseparably connected with that of the public, and that the increase of power, which they promote, may possibly fall into some other hands than their own. But the hands of government must be strengthened, they would probably say; and, for this purpose, they would be very apt to insert in their bill some discretionary powers to enable the king and his ministers to imprison not only persons “*seized and taken out of the*

B “*realm,*”

“realm,” but also persons “who shall be
 “committed in any part of his majesty’s do-
 “minions for the said crimes,” I mean,
 any crimes which I have before sup-
 posed in stating this case, *viz.* “High-
 “treason in any of his majesty’s colonies or
 “plantations in America, or ON THE
 “HIGH SEAS,” (which will include
 our own coasts any where beyond low-
 water mark,) “or the crime of piracy,”
 without any description or limitation of
 place whatsoever! So that if any inno-
 cent man (who happens not to be able
 to prove an *alibi* for every day, and even
 every hour, since these troubles began)
 should be maliciously “charged with”
 the crime of *treason* or *piracy* committed
 within half a mile of the British coasts, he
 may be seized and imprisoned, “without
 “bail or mainprize,” at the *will and plea-*
sure of the king and council, for *many*
months; and, at the expiration of the
 limited time, (without any farther exa-
 mination

mination or opportunity of being heard at all by his country,) his term of confinement is prolonged by another *such act*, and perhaps another after that, (as evil examples beget others,) till the time of his relief by “*due process of the law*” becomes totally *uncertain* and *indefinite*! — A deplorable condition this! which, in our common law, is deemed “*wretched slavery*;” — for, “*Misera est servitus*” (says the maxim) “*ubi jus est vagum aut incertum.*” (*Principia leg. & AEq. p. 61.*)

But the condition of the *deluded* subjects will be rendered still more completely *uncertain* and *wretched*, if the compilers of the supposed suspending act should endeavour to avail themselves of *vague* terms and expressions: — for instance, — (in the body of the bill,) — “*Such crimes*” (referring to the crimes particularly named in the former part)

instead of “*the said crimes* :” — for, as “*Nullum simile est idem*,” — (“*LIKE is not THE SAME*,”) — the expression, “*such crimes*,” signifies only *similar crimes*, and not *the same crimes* before expressed, whereby the power of the *act* would be liable to an arbitrary extension at the *will* of the magistrate!

Whenever persons in power cease to be *duly limited* by a free parliament, they will pay but very little regard to the grossness of the propositions which they tender to that, *once, august assembly*; and therefore, if such an *illegal power* should ever be usurped by any set of men, we may then expect to find many more *vague expressions* in our public *acts*! — We may in that case, without improbability, suppose the penning of a *suspending act* to be — not only “*for such crimes, OR ANY of them*,” — but also “*for SUSPICION of SUCH*

“*CRIMES*,

“ CRIMES, or any of them, by any ma-
“ gistrate,” &c. viz. any trading ma-
gistrate, pensioned Middlesex justice, or
other wretched time-server, that may
happen to be entrusted with a power of
committing to prison. — And in such
times it will afford a sufficient handle
against any person whatsoever, if they
are but “ charged with” such crimes,
whether they be guilty of them or not;
or even if they be but “ CHARGED
“ WITH” the “ SUSPICION of SUCH
“ crimes, or any of them, by ANY ma-
“ gistrate,” &c. — Nothing more
arbitrary or *capricious* can easily be de-
scribed; and yet, alas! my *supposed*
bill by no means exceeds the bounds of
probability; for, when the baneful
practice of *bribery* becomes triumphant,
and the very foundations of government
are thoroughly *corrupted*, we may ex-
pect that *probability* will still go farther,
and that the above *supposed* extraordinary
powers

powers will be farther augmented by a “*non obstante*,” to trample down at once, not only the *Habeas Corpus Act*, but all the other fences of British liberty, national justice, and common right, on which the safety of Englishmen depends! *viz.* “any law, statute, or usage, to the contrary, in any wise notwithstanding.”

The clause is indeed a common one, for the repeal of useless or indifferent matters; but, when the effect extends to annul all the laws of *personal protection*, and the *common right* of Englishmen to “*the due process of the law*,” (which is, to be tried *without delay* by their country, [*per legem terræ*], and, *if innocent*, to be restored to freedom,) — such a *suspension*, I say, of *common justice* and *common right* is so fundamentally subversive of the British constitution of state, that no authority of

of parliament can make it *legal*; because it is *high-treason* against the king and people! and all the abettors and promoters of such an act would thereby render themselves “*eternally infamous*” in the eye of the law! — which is declared by a constitutional maxim: — “*LEGEM* “*TERRÆ amittentes PERPETUAM IN-* “*FAMIÆ NOTAM inde merito incur-* “*runt.*” (3. inst. p. 221.) — “*Those men,* “*who set aside THE LAW OF THE* “*LAND,*” (which is certainly the case of those who vote for *suspending* it,) “*do thereby incur a PERPETUAL STAIN* “*of INFAMY!*”

If ever such an act, therefore, should subsist, and the promoters of it remain in power, British subjects may amuse themselves with the *name of freedom* if they please, but they will have no more *real and just* right to boast of their *liberty* than the subjects of France or Prussia!

For

For they would then be involved exactly in the same *uncertain* and *precarious* condition! And, though they might not, perhaps, for some considerable time afterwards, begin to feel the pernicious effects of a government *unlimited by law*, yet that would not render their condition less *base* or *slavish*, for our common law has already stated the condition of such as an *outlawed* people: — “ *Res est misera, ubi jus est vagum.*”* — “ *WRETCHED is the state of affairs wherever COMMON RIGHT is vague and uncertain!* — Nay it is downright *slavery*, as declared by another maxim, already cited, in p. 11.

The learned Sir Robert Atkins (formerly one of the judges of the Common Pleas) has remarked, (concerning “ *the pope’s exercise of his power of dispensing,*”

* “ *Grounds and Rudiments of Law and Equity,*
“ *p. 304.*”

“*sing*,” or rather of *suspending laws*, by virtue of such a “*non obstante*,”) that “*it was used with some moderation*” “*AT FIRST*, in cases that seemed to “*be of GREAT NECESSITY* only ; but “*at last, by degrees, it grew to be in-*“*tolerable and unlimited.*” (See his parliamentary and political Tracts, p. 247.) And surely we ought to be equally jealous of every claim or pretension to *omnipotence*, or *unlimited power*, whenever and by whomsoever it is made, though we do not immediately feel the baneful effects of it.—There are but too many advocates for the imaginary *omnipotence*, or *unlimited power*, of parliament!

True it is, that the same persons, who are entrusted with authority to *make laws*, are entrusted likewise with authority to *suspend* or *repeal* them ; but in this (without the least detriment to their

just liberty and free privileges) they are not without limitation. Even liberty itself is *limited*, and submits to the same sort of definition ; for “ *liberty*” (says an old and eminent law-writer) “ is not a “ power to act, *quidquid libet*, what we “ *list*, (for this may be licentious, and a “ lust or passion may enslave a man” [or men] “ as much as any chain or fetter,) “ but, *quod licet*, what is *just* and *ratio-* “ *nal.*” (“ *Rights of the Kingdom*, p. “ 136.”) And, in the preceding page, speaking expressly of the house of commons, or parliaments, he says : —

“ *When they are FREEST they have LI-*
 “ *MITS, for they be NOT INFINITE.*
 “ *Nay, when they are MOST FREE, they*
 “ *are MOST BOUND to GOOD ORDERS*
 “ *and TO RIGHT REASON.*” The truth of this doctrine is unquestionable : for, if a *parliament*, or *legislative power* of any kind, (regal or popular,) presume to enact ordinances which oppose, or in

any

any respect set aside, *natural justice*, or the common right of innocent persons, and shall claim an authority or privilege to do so, (which is ignorantly and vainly called *omnipotence of parliament*,) the said power ceases to be a *legal power*, because it casts off the restraint and government of God's indispensable laws, and thereby becomes excommunicated from God !

—“ *Shall the throne of INIQUITY have fellowship with thee, which FRAMETH MISCHIEF BY A LAW ?* ” (Psalm xciv. 20.)

A due consideration of this ought to restrain the modern rage of act-making ! for it is laid down, in that ancient and respectable law-book, called *FLETA*, that “ *the power of RIGHT (or justice) is of God alone, but the power of WRONG (or injury) is of the DEVIL ; and the works of whichever of these two,* ” (viz. of God or of the devil,) “ *he shall*

“ *do*,” (speaking of the agency of a king, and the same may surely be said also of a parliament,) “ *of him he is the servant.*”* And to this doctrine, as an unquestionable truth, that illustrious lawyer, *Henry de Bracton*, (who was a judge in this realm above 530 years ago,) has made the following addition: —

“ *Therefore*,” (says he, still speaking of a king,) “ *while he DOES JUSTICE he is the vicar of the ETERNAL KING ; but he is the SERVANT OF THE DEVIL while he declines to INJUSTICE or WRONG.*”†

And, in like manner, a parliament, or

the

* “ *Potestas enim JURIS solius est DEI, INJURIÆ vero DIABOLI, et, cuius OPERA fecerit, ejus et minister erit.*” (Fleta, c. xvii. p. 17.)

† “ *Quia illa potestas*” (potestas JURIS) “ *soliū DEI est ; potestas autem injuriæ DIABOLI, et non DEI ; et, cuius horum opera fecerit rex, ejus minister erit cuius opera fecerit.*” (And then follows the addition quoted above.) “ *Igitur, dum FACIT JUSTITIAM, vicarius est REGIS ÆTERNI ; minister autem DIABOLI, dum declinet ad injuriam.*” Bract. lib. iii. c. 9, p. 107.

the persons entrusted with the power of legislation, are to be esteemed as *the servants of the devil*, and as enemies to God, while they promote or establish any notorious *injustice*: for, “*Know ye not, that, to whom ye yield yourselves servants, to obey, his servants ye are to whom ye obey; whether of sin, unto death, or of obedience, unto righteousness?*” (Rom. vi. 16.)

Many laws there are which belong to God as well as man, and which are therefore to be esteemed as parts of the ETERNAL LAW: *i.e. the WILL of GOD that all things be moved and directed to a good and proper end; a perpetual and constant WILL to give to every one his RIGHT;*† and

no

† “*LEX ÆTERNA nihil aliud est quam ipsa summa ratio gubernationis rerum in Deo, sive illa summa ratio DIVINÆ SAPIENTIÆ, qua vult Deus omnia a se condita, moveri, et dirigi, ad bonum et debitum finem,*”—&c. And again: “*LEX ÆTERNA, sub alia*

no *right* can be more sacred than the right of an *innocent man* to obtain **FREE-
DOM**, by “*due process of the law*,” from dures and unjust imprisonment: for, “**LIBERTY** is *inestimable* ;” (“*libertas est res inestimabilis*,” Jenk. cent. 52.) and “*is planted BY GOD in the very na-
ture of man.*” (“*Libertas a Deo ho-
minis est indita naturæ.*” Fortescu de laud. Leg. Ang. 41.) So that “*hu-
man nature intreats (or implores) fa-
vour in the CAUSE OF LIBERTY more
than in any other cause* ;”|| and consequently the man, who “*does not favour
the cause of LIBERTY*,” is already condemned, in our common law, as “*im-
pious*

“*alia descriptione, dicitur PERPETUA et CONSTANS
VOLUNTAS JUS SUUM unicuique tribuens,*” &c.
Doct. et Stud. c. i. p. 2.

|| —“*Humana natura in libertatis causa favorem
semper, MAGIS QUAM IN ALIIS CAUSIS, deprece-
tur,*” &c. Ib. c. xlvi. p. 109.

“ pious and cruel.” § And, in like manner, every act of parliament, or statute, which is *unfavourable* thereto, (by reducing freedom and augmenting *slavery*,) must necessarily be esteemed equally obnoxious and inimical to GOD and MAN: — for, “ CRUDELIS *etiam* NECESSARIO “ *judicabitur* LEX, quæ servitutem aug- “ mentat et minuit libertatem.” (Fortescu, c. 41.) And, as this “ *will of God*,” respecting the *right of men*, is, in the above quotation, declared to be “ *perpe- tual and constant*,” it necessarily follows, that *no human authority* upon earth can *suspend* or *annul* any part of the *eternal law*, without grievous sin! for our first allegiance is made in baptism to *God and his laws*: and the latter consist not merely in the *written injunctions* of divine revelation, (which we call the *scriptures*,) but also in *reason* and *natural justice*;

§ “ Impius et crudelis judicandus est qui libertati “ non favet.” Co. Lit. 124.

tice ; the knowledge of which (though it is a divine attribute) is inherited by mankind in general, *and written in their hearts* ; or else there could be no such thing as the imputation of sin ! THE LAW OF REASON is therefore justly esteemed the *first foundation* of the laws of England : — “ *Primum fundamentum legis Angliæ est lex rationis.* ” (Doct. et Stud. c. v. p. 14.) And “ *the law of reason* ” includes “ *the laws of nature* ”, which cannot lawfully be suspended or changed by parliament ; for our common law declares that they are immutable : —

“ *Jura*

“ *“ Scribiturque hæc lex”* (lex rationis) “ *in corde cuiuslibet hominis, docens eum quid agendum, et quid fugiendum, unde dicit apostolus ad Romanos secundo.* ” “ *Omnes gentes, qui legem S. scriptam non habent NATURALITER, ea quæ legis sunt faciunt, hujusmodi legem non habentes ipsi sibi sunt lex, qui ostendunt opus legis SCRIPTUM IN CORDIBUS SUIS, testimonium reddente illis CONSCIENTIA IPSORUM.* ” Et, quod lex rationis in corde scribitur, ideo deleri non potest, nec etiam recepit mutationem, ex loco nec tempore ; sed *ubique, et inter omnes homines, servari debet.* ” “ *NAM JURA NATURALIA IMMUTABILIA SUNT,* ” &c. Doct. et Stud. c. ii. p. 5.

“ *Jura naturæ sunt IMMUTABILIA.*”
 (Prin. Leg. et Æquit. p. 46.) “ The
 “ laws of nature are unchangeable:”
 they cannot therefore be *lawfully* sus-
 pended or *changed* by parliament; nei-
 ther can any manifest *injustice* be made
lawful: for, by the same authority, we
 know, that “ *LEX INJUSTA non est
 LEX.*” “ An unjust ordinance” (or
 act of parliament) “ is not law.” —
 No plea of *necessity* could render such
 a parliamentary exertion even excusea-
 ble; for, though there are many max-
 ims on this head, as “ *Necessitas non
 habet legem;*” and “ *Salus populi*”
 (which even bad legislators will pretend
 to regard) “ *suprema est lex;*” — “ *Ne-
 cessitas facit licitum quod alias non est
 licitum;* — “ *Necessitas vincet legem.*”
 Yet these can relate only to such laws
 as are made to remedy inconveniences,
 not in themselves evil, mere *mala prohibi-
 ta*; but cannot authorize any thing that

is *malum in se*; for that would be REBELLION AGAINST GOD, which no case can justify. For, of those who say “*Let us do evil that good may come;*” the Scripture has added, “*Whose damnation is just.*” (Rom. iii. 8.) “*Fiat justitia, ruat cælum,*” is, therefore, a sound maxim both of law and politics; so that no *necessity* whatever can justify the establishment of any *injustice*, without a remedy: and no *injustice, evil, tort, wrong, or iniquity*, can be more flagrant or more dangerous to the state than an unnecessary *delay* of *common right* and *justice* to an innocent man, whose *personal liberty* is unjustly invaded; for, if “*personal liberty*” is not secured and protected BY EQUAL LAW, no property, or other rights whatsoever, can have any real value; and from thence it arises that the *common right* of every innocent person to the *laws* of protection, is esteemed our highest and most valuable inheritance;

inheritance ; for, " *Major bæreditas*
" *venit unicuique nostrum a JURE et LE-*
" *GIBUS quam a parentibus ;*" " A greater
" inheritance descends to every one of us
" from" (*the constitutional establishment of*)
" right* and the laws than from our pa-
" rents." — A " *non obstante ;*" therefore,
which boldly suspends at once all the *an-*
cient constitutional laws of personal protec-
tion, and leaves an innocent man without
a remedy, cannot be LAW, being contrary
to all that ought to be esteemed law ; for,
" *Lex nemini operatur iniquum, nemini fa-*
" *cit injuriam ;*" " *Law works no iniquity to*
" *any man, does INJURY to no man : ;* and,
" *Quicquid est contra normam RECTI est*

* “It is called **RIGHT**,” (says the lord Coke, 2nd inst. p. 56,) “because it is **THE BEST BIRTHRIGHT** “the subject hath; for thereby his goods, lands, wife, “children, **HIS BODY**,” (for it is the birthright and best PROTECTION of every honest **SEAMAN**, as well as of all other men,) “life, honour, and estimation, are **PROTECTED** from injury and wrong:” (and then he cites **THE MAXIM** :)—“Major **hæreditas**,” &c.

“ *injuria* ;” “ *whatever is contrary to the rule of RIGHT, is INJURY* :”— and “ *Tort à la ley est CONTRARY.*” Co. Lit. 158. “ *Wrong is CONTRARY to law,*” and therefore “ *whatever is done CONTRARY TO LAW*” (or “ *makes against law*”) “ *ought to be esteemed as UNDONE.*”— “ *Pro infecto habetur,*” (says the maxim;) “ *Quod contra legem fit pro infecto habetur;*” so that the examples, that have been cited as precedents for *suspending* the *laws of liberty and protection*, are no precedents of *justification*; for the legislative power of *dispensing* with *laws*, extends only to those laws which relate to *mala prohibita*, as I have before remarked, (“ *Dispensatio est MALI PROHIBITI provida relaxatio utilitate communi pensata,*”) and cannot effect the laws of *natural justice* and common constitutional *right*; because an act of parliament for any such purpose

pose must be a *malum in se*, and consequently is *null* and *void* in itself.

The king has no power, nor can be allowed any power, to *defer*, *postpone*, or *suspend*, that *equal and right justice* which is due, *by inheritance*, to all British subjects, (to common sailors as well as others,) without respect of persons; because the king subscribed *Magna Charta* when he received the Holy Sacrament at his coronation, (of which the author of this protest is an eye-witness, being very near the king's person at that time,) whereby he has promised before God and the people, that he *will delay or deny to none right or justice*; — “ *Nulli negabimus aut differemus iustitiam vel rectum*;” (cap. xxix.) so that this excludes all power of *suspending* any of the laws on which *justice* or *right* depend! The king, therefore, must neither *delay* justice himself, nor be, in any way, instrumental in preventing

preventing his judges from proceeding to do *justice* according to Magna Charta and the other ancient and fundamental laws of the land; for the judges are also sworn to “*deny to no man common right, by the king's letters, nor none other man's, nor for none other cause.*” (See the oath made 18 Edward III. Keble's Statutes, p. 110.) This wary expression in the oath, (viz. “*for none other cause,*”) excludes all possibility of admitting any *exception* whatsoever; so that the sworn judges are so bound to *God, the king, and the people,* (for they are sworn to “*serve the people*”*) as well as the king,) that they must not obey even an act of parliament which sets aside this matter of “*common right,*” I mean the *common right of PERSONAL LIBERTY to all ranks of men* that are innocent from crimes and free from debt.

Some

* “*Ye shall swear, and well and lawfully ye shall SERVE our lord the king, AND HIS PEOPLE, in the office of justice, &c.*”

Some worthy men, zealous for the *privileges of parliament*, are, indeed, unwilling to admit this *seeming independence* of the judges, in the administration of *justice* or *common right*; which, by their oaths, they are to “*deny to no man* :” but the *just* privileges of parliament never can be injured by the independence of the judges *in this single point*; because, if a judge is so scrupulous, or conscientious, that he refuses to enforce or obey an *unjust* statute, it is still in the power of parliament to impeach or discharge him from his office for disobedience, so that the *loss* would fall only upon the honest and worthy judge, though the *dishonour* of the *injustice* would rest where it began! Nevertheless, while *JUDGES* remain in office, they must not acknowledge any obligation *superior* to that which they owe to *natural justice* and the *laws of God*; for they are *bound to God* (as I have

have already remarked) by the nature of their office, as well as to the *king* and the *people*; though this *first* and *most binding* obligation is not expressed in their oath; yet the Scripture says, “ *The judgement is God’s;*” (Deut. i. 17.) and again, “ *Ye judge not for man, but for THE LORD, who is with you in the JUDGEMENT:*” (2 Chron. ix. 6.) and, therefore, neither the *judges* nor the *king* himself are to be accounted *laymen*, but “ *ministers of God,*” for *righteousness, justice, and judgement.* — By the two latter, in the present case, I do not mean *penal justice* or *judgement*, but the duties of maintaining the “ *common right*” of *innocent persons*, and of relieving the *oppressed*. These are, in a peculiar manner, *sacred to God*, and, therefore, *unalienable* from the *people*, and not to be *suspended* by the authority of *parliament*; because the commands of *God*, in these matters, are *peremptory*, and can admit of

of no exceptions.—“ *Thus saith the Lord,*” (Jehovah,) “ **K E E P Y E** judge-
 “ *ment and do justice,*” (Isaiah lvi. 1.) which is diametrically opposite to the measure of *suspending* or *postponing* them. And again,—“ **K E E P** *mercy and JUDGE-
 MENT, and wait on thy God* **C O N T I N U -**
 “ **A L L Y**” or “ **A L W A Y S :**” (Hos. xii. 6.) so that there never can be any time of danger, or difficulty, so pressing and urgent as to justify the plea of a **N E C E S S I T Y** for the *suspension* of *justice* and *judgement*, when demanded by *innocent* persons under illegal restraint or *duress*! For, prisoners, that are *really guilty*, will not demand *judgement*, (by writs of *Habeas Corpus*,) for fear of the *penal* statutes; and even if such prisoners (trusting, at any time, to the want of sufficient evidence against them) should demand *judgement*, and thereby escape; yet it is better that **T E N** offenders should escape *penal justice*, than that **ONE** *innocent*

innocent man should suffer by the *denial* or *suspension* of “ COMMON RIGHT.” — “ *Melius est ut DECEM NOXII evadant,* “ *quam ut UNUS INNOCENS pereat.*” — For herein the difference between the sort of *justice* and *judgement*, for which I contend, and *penal justice*, (which may be *suspended* by competent authority,) is manifested, viz. that THE RIGHTEOUS “ JUDGE OF ALL THE WORLD” declared himself willing to *suspend* his *penal judgement* against A WHOLE NATION of notorious convicted offenders, rather than he would involve TEN *innocent* persons in their destruction, if so many could have been found among them ! This sentiment of *divine justice* was revealed, for our instruction, to a man, who was honoured with the testimony of being inclined to “ *KEEP the way of the Lord;*” — and “ *the way of the Lord,*” (as the following words declare,) is — “ *to do justice and judgement,*” (Gen. xviii. 19-33.) —

Th

The suspension, therefore, of “*justice*” and *judgement*” from *innocent* persons, is plainly the reverse of “*KEEPING the way of the Lord!*” Wherefore,— “*Let it suffice you, O princes of Israel; remove violence and spoil, and EXECUTE JUDGEMENT AND JUSTICE;*” (which is the very reverse of *suspending* them !) “*take away your exactions from my people, saith the Lord.*” (Ezek. xlv. 9.)— “*Cease to do evil; learn to do well; seek judgement; RIGHTEN the OPPRESSED;*” (for this is plainly the kind of *judgement*; which, in the former texts, God has commanded men to *KEEP*, and which, therefore, ought never to be *SUSPENDED*;) “*judge the fatherless; plead for the widow.*” (Isaiah i. 16, 17.)

It is also necessary to remark the divine testimony against those who *suspended* or did not “*KEEP justice and judgement;*” but, on the contrary, devised wicked ordinances:

cess:—“ They conceive mischief, and bring forth iniquity. They hatch cockatrice eggs, and weave the spider’s web,” &c. All which may well be said of those who enact wicked statutes to ensnare and oppress the people! And again, “ The act of violence is in their hands. Their feet run to evil, and they make haste to SHED INNOCENT BLOOD: their thoughts are thoughts of iniquity; WASTING AND DESTRUCTION are in their paths. THE WAY OF PEACE THEY KNOW NOT; and” (there is) “ NO JUDGEMENT in their goings;” (meaning no legal judgement, or “ due process of the law;” for the Hebrew word is בְּדֻעָה properly signifying a legal decision, as בְּדֻעָה also signifies a JUDGE;) “ they have made them crooked paths; (which may surely be said of wicked or unjust laws, but more especially of any law to suspend or annul the law itself!) “ whosoever goeth therein shall not know

“ PEACE.

“ PEACE. Therefore is JUDGEMENT
 “ far from us, (meaning that “ *the due pro-*
 “ *cess of the law,*” or *proper LEGAL deci-*
sion, is far from us; for it is the same
 Hebrew word as before;) “ *neither doth*
 “ **RIGHTEOUSNESS**”* (or “ *commonright*”)
 “ *reach us,*” &c. (Isaiah lix. 4-9.) And
 again, the 14th and 15th verses of the
 same chapter, demonstrate, that what I
 have already cited from it relates to the
 failure of *justice* and *judgement*, or the
suspension of *due legal process*! “ *And*
 “ *judgement*” (said the prophet) “ *is turned*
 “ *away backward; and justice*” (or rather
 “ **COMMON RIGHT**” as I have before
 remarked; for the Hebrew word is **חֲדָשָׁה**
 “ **RIGHTEOUSNESS**”) “ *STANDETH A-*
 “ *FAR OFF: for TRUTH is fallen in the*
 “ *street,*”

* In the common version it is rendered,—“ *neither*
 “ *doth JUSTICE overtake us:*” which is liable to be
 understood in a contrary sense from the original as if
 it referred to *penal justice*, whereas the Hebrew word is
חֲדָשָׁה (properly *righteousness*); which (as it is due to
 all men) may justly be understood to signify that which
 in our English law is called “ *common right.*”

“ *street*,” (i. e. the TRUTH of conviction or acquittal, by legal process, “ *is fallen*,”) “ *and EQUITY cannot enter* ;” (which must generally be the case when WILL is set up above law ! but hear the prophet,) “ *Yes ; TRUTH*” (says he) “ *faileth* ; “ *and he that departeth from evil maketh himself a prey* :” (or, as we read in the margin, “ *is accounted mad* :” i. e. in the opinion of those detestable politicians who “ *do evil that good may come* :”) “ *and the Lord*” (Jehovah) “ *saw ! and it displeased him that there was NO JUDGE-MENT !*” (כִּי אֵין מִשְׁפָט) — so that it can never be either lawful or expedient to remove the “ *due process of the law*” from the reach of innocent persons, by suspension, or in any other manner,). “ *And he saw that (there was) no man* :” that is,—no man to stand in the gap for the defence of his ETERNAL LAW, which is explained by the 4th verse, — “ *None calleth for justice*,” (פָּרוּב more properly,

perly for RIGHTEOUSNESS, or “ THE
 “ COMMON RIGHT” of the people,) “ nor
 “ any pleadeth for truth,” &c. [Neither
 prince, prelate, nor judge, it seems, were
 inclined to enter a protest in favour of
 immutable justice and right! — Horrible
 depravity!] “ And he” (the almighty)
 “ wondered that there was no intercessor!
 “ therefore his arm brought salvation unto
 “ him; and his RIGHTEOUSNESS, it sus-
 “ tained him. For he put on RIGHTEOUS-
 “ NESS as a breast-plate: and an helmet
 “ of salvation” (i. e. in behalf of the
 poor, and those that were unjustly op-
 pressed) “ upon his head; and he put on
 “ the garments of VENGEANCE (for)
 “ cloathing; and was clad with ZEAL as a
 “ cloke. (And then follows, “ THE LAW
 “ OF RETRIBUTION ;). “ According to
 their deeds, accordingly he will repay, —
 FURY to his adversaries, RECOMPENCE”
 (or retribution) “ to his enemies, to THE
 ISLANDS he will REPAY RETRIBUTION !”

Where

Where then (if we have any belief in God's *eternal law*) is the boasted "omnipotence of parliament!" Or, who can be truly "loyal," in the proper sense of that epithet, but those who acknowledge that the former is *unchangeable*, and that "common right," and the justice due to *innocent* persons, can never be SUSPENDED without *rebellion against God*! For there is *no salvation* for man without CHARITY; and our common law teaches us,—that "the highest" (and therefore the most *indispensable*) "CHARITY is to do JUSTICE to all and every single soul at ALL TIMES:"—so that A TIME of NECESSITY (I mean SUCH A TIME as is generally called so) will afford but a poor excuse for so notorious a breach of this "FIRST principle of CHARITY;" "Summa CARITAS est facere JUSTITIAM singulis et omnibus OMNI TEMPORE."—My countrymen, in general, I fear are too depraved to bear all the truths

truths of my remonstrance ; but I cannot now be silent without guilt !

Many are the limitations of “*the law of reason*,” (too numerous to be here recited,) which necessarily annul *all acts of legislature* that unhappily exceed them, + if the “*first foundation of the English law*” (already mentioned in p. 24.) be duly regarded. And the *second foundation* of our excellent legal establishment acknowledges no fewer limitations of legislature than there are *divine precepts of morality and justice* in the *Holy Scriptures*. For “**THE SECOND FOUNDATION**

+ “*Against this law*,” (i. e. the law of reason,) “*prescription, STATUTE, nor custom, may not prevail* ; “*and, if any be brought in against it, they be not prescriptions, STATUTES, nor CUSTOMS, but*” (CORRUPTELÆ, CORRUPTIONS;) “*things void and against justice.*” (Doct. et Stud. Eng. ed. 1663, p. 5.)

‡ —“*Et contra eam*” (viz. legem rationis) “*non est præscriptio vel ad appetitum STATUTUM, sive consuetudo: et, si aliqua fiunt, NON SUNT STATUTA, sive consuetudines, sed CORRUPTELÆ.*” (Doct. et Stud. c. ii. p. 5. ed. Lat.)

“ *TION of the law of England is the LAW*
 “ *OF GOD :*” against which the haughty
 “ *omnipotence of parliament*” (the pope of
 England) has not the least authority to
 ordain any thing ! insomuch, that “ *if*
 “ *ANY STATUTE is set forth AGAINST*
 “ *them, it ought to be esteemed of NO*
 “ *FORCE in the law of England.*” || For,
 if FOUNDATIONS are removed, the whole
 fabric of our *law* and political constitu-
 tion must precipitate into destruction !

I appeal to the JUDGES THEMSELVES
 for the *truths* which I here assert. They
 know the foundations of our *law* : they know
 that there are many *maxims* of a supe-
 rior order § which bear ample testimony
 to

|| —“ *Etiam, si aliquod statutum esse editum contra*
 “ *eos;*” [probably mis-written for *eas*, (leges divinas,) or *eam* (legem divinam)] ; “ *nullius vigoris in legibus*
 “ *Angliae censeri debet :*” &c. Doct. et Stud. c. vi.
 p. 18. b.

§ By maxims of a superior order, I mean, those
 inevitable and necessary conclusions of *reason*, which
 belong

to my doctrine; that *justice* or “*common right*” can never be *suspended*, without subverting the *legal* constitution of this kingdom! — “*Si a JURE discedas VAGUS eris, et erunt omnia omnibus INCERTA;*” ¶ (Co. Lit. 227.) and “*Res est misera;*” — “*Misera est servitus ubi JUS est VAGUM aut INCERTUM;*” * (4 Inst. 246.) wherefore, — “*Justitia nemini neganda est. † Justitia est cuilibet facienda. ‡ Injusticia non est alicui*

F 2 fa-

belong to the *first foundation* of *English law*: for, though these may be justly included also in the *fourth foundation* of our law, under the general head of *Maxims*, yet they ought to be duly distinguished from those less obvious *maxims* which relate only to the general customs of the kingdom, and have no claim to be ranked higher than the *fourth foundation*.

¶ “*If you depart from COMMON RIGHT, you will become vague,*” (or *unsettled*,) *and all things will be uncertain to all men.*”

* *Affairs are in a wretched state*,” — nay, “*it is deplorable slavery, wherever justice*” (or *common right*) “*is vague or uncertain.*”

† “*Justice must be denied to no man.*”

‡ “*Justice must be done to every man whatsoever.*”

“ cienda. || *Justitia non est neganda, non*
 “ DIFFERENDA.” § (Jenk. Cent. 93.)—
 And, therefore, no plea of *necessity* what-
 ever can excuse so great an *evil* as a sus-
 pension of *justice* or *common right*! This
 is confirmed also by another maxim,—
 “ *Melius est OMNIA MALA pati quam*
 “ *malo consentire.*” ¶ (3 Inst. 23.) How
 much soever any particular man, in au-
 thority, may be either inclined, or think
 himself obliged to accommodate his op-
 nion to the present times of *violence* and
injustice, yet, I flatter myself, that there
 is not a single judge in the kingdom, who
 will venture to set his face against these
 indispensable conclusions of *reason*; and,
 therefore, to the *judges* I have appealed
 for the *truth* of my assertion; that every
 act

|| “ *Injustice must not be done to any man whatsoever.*”

§ “ *Justice must neither be denied nor delayed,*” i. e. nor
 SUSPENDED.

¶ “ *It is better to endure ALL adversities than to assent*
 “ *to ONE evil measure*”!

act of parliament which contains any thing in it contrary to these first “ principles of *reason* and *honesty*,” is *null* and *void*;—is a *corruption*, and not *law*! For statutes,—“ *Nec contra RATIONEM,* “ *nec contra LÈGEM DIVINAM existunt.*”* (Doct. et Stud. c. 10. de Diversis Statutis.) because “ *Hæ duæ leges declinari non possunt :*”† (ib. c. 17.) and because the holy Scriptures denounce WO against the makers of *unjust laws*. —“ *Wo unto them that decree UNRIGHTEOUS DECREES,*” (or laws,) “ *and write grievousness (which) they have prescribed: to turn aside the needy from JUDGEMENT;*” (which, in Israel, was a judgement of peers; the judgement of the congregation) “ *and to take away the right*” (or rather “ *the judgement*” or “ *process of the law*;” for the

* “ Statutes “ *cannot exist either against REASON, or the LAW DIVINE.*”

† Because “ *these two laws*” (the law of *reason* and the law of *God*) “ *cannot abate or turn aside.*”

the Hebrew word is וְשָׁמָד) “ *from the poor of my people, that widows may be their prey, and that they may rob the fatherless.*” (And then follows the retribution, which proves that there never can be any NECESSITY for INJUSTICE.) “ *And what will you do in the day of visitation, and in the desolation (which) shall come from far? To whom will you flee for help? and where will ye leave your glory?*” [or, (in the plural,) *your honours?*] (Isai. x. 1—3.).

No necessity, therefore, whatever, can justify the adoption of an *unrighteous* or *unjust* measure, by any legislature upon earth; because no danger or evil whatsoever is so much to be dreaded as God’s vengeance for the failure of *justice*, *judgement*, and *righteousness*; and, therefore, “ *common right*” and *equal justice*, which belong to God, for the good of his people, are so interwoven and united with the

the legal constitution of these kingdoms, that to set them aside, by public authority, amounts to a *total subversion of the common law*, and, of course, to the *legal constitution of these kingdoms*, which no act of parliament can effect; for that (with respect to the legislature) would be a sort of *felo de se*,† a crime of the *highest treason* in all who voted for it! for which they are liable to be impeached by the great body of the nation, in case a political reformation should take place; and precedents are not wanting for inflicting *capital punishment* on *JUDGES*, for enforcing *unjust laws*, though the same had obtained the sanction of parliament. To submit the *operation of law* to the *will of the king and council*,

† ‘ Whatever is destructive of the law cannot itself be law; for then the law would be *felo de se*:’ ‘ *Lex quæ leges avertit, ipsa lex esse non potest;*’ ‘ a thing divided against itself, and therefore will not stand.’ ‘ *Ubi non est pudor, nec cura juris, instabile regnum est.*’ Judge Atkins, p. 221.

cil, (which is done by this supposed act,†) would tend to annul even THE KING'S AUTHORITY; for, it is laid down as an established principle of the British constitution, by one of the best authorities in our common law, that “*there is no king where will rules, and not law:*” “*Non est enim rex, ubi dominatur voluntas et non lex;*” so that a king of England ceases to be king, when he ceases to be limited by the LAW; as another old constitutional maxim also informs us, “*The law is the most high inheritance that the king has; for, if the law was not, there would be no king nor inheritance;*” § and another maxim,

† “*That no judge or justice of peace shall bail or try any such person or persons, without order from his majesty's most honourable privy-council, &c. any law, statute, usage, &c. notwithstanding;*” boldly subverting at once the whole legal constitution.

§ “*Le ley est le plus haute inhéritance que le roi ad: car par la ley il-même et tous ses sujets sont rulés; et, si le ley ne fuit, nul roi et nul inhéritance sera.*” Year Book, 19 Hen. VI. 63.

im says, “ *Cessa regnare, si non vis judicare.*” “ Cease to reign, if you will not do justice.” — The king, therefore, must not deny or delay common right; and the insertion of a “ *non obstante,*” to set aside at once all the laws, statutes, and usages, of the kingdom, respecting THE PERSONAL PROTECTION of the subject, is a manifest subversion of our legal constitution, and consequently is HIGH-TREASON against the king, as well as against the state, and the latter is declared to be no less a crime than the former;— “ *Non minor est proditio LEGIS, quam REGEM velle perdere.*” — So that such an attempt against the law is not only a most dangerous undermining of the king’s crown and dignity, but the highest act of treason and DISLOYALTY in the strictest sense of the word: as no man can be LOYAL who votes for a general suspension of all the LAWS and fences of that

most valuable *right* of the subject, the *right* to personal liberty !

Such a suspension of *law* is too similar to that *non obstante* of pope Innocent IV. “ whereby” (as the proctors of king Henry III. declared) “ common right was annulled, and authentic records rendered void.” — “ *Per quam jus pro nibilo habetur et authentica scripta enervantur.*” (Judge Atkins Parl. Tracts, p. 212.) And the same learned judge remarks, that ‘ it is part of the description given of *antichrist*, by the prophet Daniel, c. 7.’ “ *He shall think that he may change times and laws, and they shall be given into his hands.*” (P. 218.) In the following paragraph he also cites bp. Jewel’s Exposition upon the Epistle to the Theffalonians, (fol. 131.) viz. “ *Antichrist*” (says the bishop) “ *is there called ὁ ἀνόμος, a man without order or law, that man of sin; which is one of*

" of the peculiar notes of antichrist."
 " He shall seek to be free, and go at
 " liberty ; he shall be tied to NO LAW,
 " neither of God nor man." Hence
 " it is said of the pope, that he is " *So-*
 " *latus OMNI LEGE HUMANA. In iis*
 " *quæ vult, est ei pro ratione VOLUN-*
 " *TAS, nec est qui dicat illi, Domine, cur ita*
 " *facis? Ille potest SUPRA JUS DISPEN-*
 " *SARE, et de injustitia facere justitiam,*
 " *corrigendo jura et mutando.*"

To set up the WILL and PLEASURE of man, therefore, above LAW, or to pretend to give a power to the king, or his privy-council, to SUSPEND the fundamental LAWS of the kingdom, is to render them *οἱ ανόνοι, lawless and unlimited*, like the princes and powers of ANTICHRIST, foretold in the second Psalm, who say, — " *Let us break their bonds asunder, and cast away their cords from us;*" viz. the bonds of reason,

law, and *natural justice*, and the *cerds* of allegiance to *divine authority*; for, to this effect, I have seen a remark upon the text, by judge Atkins, though I cannot at present find the passage. An act of parliament for so base a purpose, as the establishment of an *unlimited power*, is so far from deserving the name of *law*, that it must necessarily be deemed a *subversion of law*; as it sets up the *will and pleasure of man (king and council)* above the *operation of law*, contrary to a fundamental principle of the constitution.

“ *More SECURE, as well as MORE POWERFUL, is the effect (or operation) of LAW, than the WILL and PLEASURE of man;* ” “ *Firmior et potentior est operatio legis quam dispositio hominis;* ” (Co. Lit. 102.) because, “ *the man who is allowed more power than is just and equal, will affect still more than is allowed:* ” “ *Cui plus licet quam par est, plus vult quam licet.* ” (2 Inst. 464.).

From

From the unhappy experience of *all* nations, in *all* ages, this established doctrine of our *common law* may be amply proved ; and, with respect to *the supposed act* in question, it is certainly liable to afford such opportunity, and temptation to promote unjust charges against innocent persons ; (arming a particular party with unconstitutional powers of oppression and iniquity, to intimidate all honest and independant people;) that it is manifestly a *malum in se*, (as I have said,) which can never be made *lawful* ; nay, the whole business is so *disloyal* that it seems to be nothing less than “*framing mischief by a law*,” which is the most dangerous as well as most *iniquitous* mode of oppression ; because it amounts to *an apostacy from God* ! as the Scriptures declare, “*Shall the throne of iniquity have fellowship with thee, which formeth mischief by a law?*” (Psl. 94. 20.) And again,

again, “*Wo be to them that decree unrighteous decrees, and that write grievousness which they have prescribed, to turn aside the needy from JUDGEMENT,*” &c. The very case in point! *Isaiah x. 12.* See pages 19, 33, 41, 44, and 45.— We are bound, by our baptismal vow, to “*renounce the devil and all his works,*” and of course it is our duty to resist and oppose *evil* to the utmost of our power; otherwise we deserve not to be ranked with the *servants* and *soldiers* of the “*prince of peace,*” because he is, also, the *king of RIGHTEOUSNESS*; and, therefore, in a Christian community, every *private* person, every individual, has an undoubted right to detect and protest against every *iniquity* and *injustice*, even though it shall have obtained the sanction of the public legislature; and it is a maxim of the common law, that “*Unusquisque paci et justitiae publicae tenetur succurrere;*” but the judges are still more particularly

particularly bound (both on account of their learning and office) to point out and reject every ordinance of man that is contrary to *natural justice* and *the laws of God*. And so far is it from being their duty to obey, or enforce, any *such laws*, that the common law has provided them a ready answer for refusing the functions of their office in such cases; — “ *Contra justitiam nihil possumus* :” for, though they are officers of the king and people, and sit in the *king’s judgement seat*, judging in *his name*; yet their duty respecting *common right* and *natural justice* does not depend on *the king*, nor any other, but on *God alone*, as I have already remarked; for they “ *judge not for man, but for the Lord*,” &c. (2d Chron. xix. 6, 7.) — And again, — “ *Ye shall not be afraid of the face of man*,” (which excludes all partial influence of kings or any other human powers,) “ *for the judgement is God’s*.” (Deut. i.

16, 17.).—And all judges ought to be deeply impressed with that indispensable doctrine of our common law, that “ *it is infinitely more heinous to offend ETERNAL than TEMPORAL majesty!* ” for it is a maxim, — “ *Gravius est ETERNAM quam TEMPORALEM lœdere MAJESTATEM.* ” — Thus stands THE LAW OF GOD respecting judges; and THE LAW OF GOD is always to be esteemed an unalienable and unchangeable part of THE LAW OF ENGLAND! (See p. 42, 45.)

Both the king and his judges are sworn (as I have already observed, p. 29, 30.) *not to delay or deny common right*; and, therefore, no danger, or other *evil* whatsoever, (against which men have ever pleaded a NECESSITY of *suspending* the laws of protection from innocent persons,) can be so great an *evil*, or be so imminently dangerous in itself, as that very measure of *suspension!* No NECESSITY whatsoever

ver can be so deplorable, or so disgracefully injurious to the state, as the *measure itself*! and, therefore, there never can be a *necessity* for such a MEASURE; and the same may be said, with unquestionable truth, concerning every other MEASURE of *oppression* and *injustice*; but more particularly may it be said of that other most notorious and *iniquitous* mode of *suspending*, or rather *annulling*, all the laws of British freedom, in the case of *seamen*; I mean the IMPRESSING ‡ them into ser-

H vice

‡ The form of *press-warrants*, and the *expressions* used therein, may, perhaps, be very ancient; and those expressions, (viz. *impress* and *press-money*,) perhaps, according to the ancient meaning of them, may be innocent and *legal*: but no *RIGHT* or prerogative, either by *usage* or *prescription*, is thereby to be presumed in favour of the *modern sense* in which they are now usually interpreted: viz. as a warrant to take a man *by force*, to drag him away, like a thief, to a *floating prison* (the most dangerous and detestable of all others); that, by *imprisonment* and *duress*, he may be compelled to enter into an *involuntary servitude*! What is this but a *true* definition of the most absolute slavery!—And yet it is *equally true* when applied to the

vice by force and violence, which the most dissolute of public ministers never presumed

the case of pressed seamen on-board the tenders and hulks. But let us examine by what authority this is done, and then judge whether the supposed prerogative is legal. The warrant is signed by the lords commissioners of the admiralty and their secretary, who claim no other authority in their justification than what is expressed in the beginning of the warrant:—viz.—

“ *In pursuance of his majesty's order in council, dated,* ”
—&c. &c.

Now, unhappily for the lords of the admiralty and their secretary, (if they should be duly prosecuted for their misdemeanor,) neither his majesty nor the privy-council (neither any of them separately, nor all of them together) have any legal power to commit, or constrain an innocent man of his liberty; because all power for any such purposes was taken from them by authority of parliament, and the act is still in full force. See 16 Cha. I. c. x. The purpose of this act is expressly “ *for the regulating the privy-council,* ” as well as “ *for taking away the court commonly call'd the star-chamber.* ”

In the preamble of this act the Great Charter is cited,—that—“ *No freeman shall be TAKEN, or IMPRISONED, or disfeized of his freehold, or LIBERTIES, &c. but by lawful judgement of his peers, or by the law of the land;* ” and also (besides several others) that inestimable statute of 28 Edw. III. cap. iii. that “ *No man, of what estate or condition soever he be, shall be put out of his lands or tenements, nor TAKEN, nor IMPRISONED,* ”

fumed to palliate, or excuse, by any other plea than this mere bugbear, NECESSITY!

H 2

It

“ *IMPRISONED, &c. without being brought into answer by due process of law:*”—so that the whole statute of 16 Cha. I. c. x. must be construed according to the true spirit of these golden laws of liberty; and more especially the 8th section of it, where we read—
 “ *That, if ANY PERSON*” (here can be no exception to the prejudice of seamen) “ *shall hereafter be COMMITTED, restrained of his liberty, or suffer imprisonment, by the order or decree of any such court of Star-chamber, &c.* (mentioning several other courts, and then adds,) *OR by the command or warrant of the King's Majesty, his heirs or successors, in their own person, or by the command or warrant of the COUNCIL-BOARD, or of any of the lords, or others of his Majesty's PRIVY-COUNCIL, that, in every such case, every person, so committed, restrained of his liberty, or suffering imprisonment,*” [which necessarily includes the case of “ *every person restrained of his liberty,*” or “ *taken, or imprisoned by a press-warrant;* especially as “ *his majesty's order in council*” (which is expressly limited by this act) is the only authority cited by the admiralty for issuing such warrants, since the clause of “ *non obstante statuto*” has been declared void in law.] “ *upon demand, or motion made,*” (says the act,) “ *by his counsel, or other employed by him for that purpose, unto the judges of the court of KING'S-BENCH, or common-pleas, in open court, shall, without delay*”

“ *LAY*

It is a practice so notoriously repugnant
to common right and equity, so funda-
mentally

“ LAY UPON ANY PRETENCE WHATSOEVER, for the
“ ordinary dues usually paid for the same, have forthwith
“ granted unto him a writ of HABEAS CORPUS, to
“ be directed generally unto all and every sheriff, goaler,
“ minister, OFFICER, or other person, in whose custody
“ the party so committed or restrained shall be,” &c.
(And, after describing the mode of making the return
to the writ, the statute directs the court that they)—
“ shall thereupon do what to JUSTICE shall appertain;
“ either by delivering, bailing, or REMANDING, the
“ prisoner: and, if any thing shall be otherwise wilfully
“ done, or omitted to be done, BY ANY JUDGE, JUS-
“ TICE, OFFICER, or other person aforesaid, con-
“ trary to the direction and TRUE MEANING hereof,”
(necessarily including the “ TRUE MEANING,” like-
wise, of all the acts recited in the preamble: so that,
if a JUDGE should presume to remand into confinement
any “ man, of what estate or condition soever he be,”
that has been “ TAKEN, OR IMPRISONED, &c.
“ WITHOUT DUE PROCESS OF LAW,”) “ that then”
(says the act) “ such person, so offending, shall forfeit to
“ the party grieved his TREBLE DAMAGES, to be recov-
“ ered by such means and in such manner as is formerly in
“ this act limited and appointed for the like penalty to be
“ sued for and recovered,” &c.

In the preamble of the Petition of Rights, (3 Cha. I.)
the same noble declarations of British liberty,
drawn from the ancient statutes against “ taking and
“ imprisoning

mentally subversive of the most essential and indispensable principles of our happy legal

“ *imprisoning a man without due process of the law,*” are expressly recited and confirmed, (see 3d and 4th §.) as well as in the last-mentioned act. And the judges are likewise expressly directed, BY BOTH ACTS, to grant “ WRITS OF HABEAS CORPUS,” for immediate relief from all such *illegal* imprisonments; whether committed by authority of the king or of the privy-council: so that there are two *habeas corpus* acts, previous to, and of equal authority with, that which commonly engrosses the title of the *Habeas Corpus Act*, though it is, in reality, only a supplement to the two former acts, being clearly intended to supply all that could be thought insufficient for the security of the subject’s liberty in the former acts above recited: being intitled,—“ *An Act for the BETTER SECURING the Liberty of the Subject, &c.*” See stat. 31 Cha. II. c. ii. And therefore whatever may seem *doubtful*, or not sufficiently *explicative* therein, must necessarily be construed *in favour of liberty*, according to the established rules and maxims of the common law.||

If

|| “ *Impius et crudelis judicandus est qui LIBERTATI non favet.*” Co. Lit. 29, from Fortescu. “ Impious and cruel is that man to be “ esteemed who does not favour liberty.”—“ *Anglæ jura in omni casu LIBERTATI dant favorem.*” (See *Prin. Leg. et Æquit.* p. 5, from Fortescu.) “ *The laws of England FAVOUR liberty IN EVERY CASE.*” And the learned chancellor Fortescu himself expresses this *noble principle* still more fully in c. xlviij. p. 109, *de laud. Leg. Ang.*—“ *Humana natura in LIBERTATIS causa FAVOREM semper, MAGIS QUAM IN ALIIS CAUSIS, deprecetur,*” &c. “ *In the cause of LIBERTY human nature ALWAYS implores FAVOUR more than in any other cause.*”

legal establishment ; and, at the same time, so impious a violation of that *natural*

If a judge, therefore, should remand a man into any such illegal imprisonment, he immediately (by the inevitable construction of these laws§) becomes a party in the injury : for the illegality of remanding a man, brought up by *HABEAS CORPUS*, where “*no cause is certified*,” (that is, no legal cause,) is severely condemned in the 5th sect. of the *Bill of Rights* : and the subsequent act, of 16 Cha. I. c. x. gives a penalty of *treble damages*, as I have already remarked. And, what is worse, if any judge should be guilty of such *injustice*, in the case of a *pressed man*, he would be liable to still greater penalties, because the case of *pressing* necessarily includes, not only the circumstances of “*taking and imprisoning a man without due process of the law*,” but also the intention of carrying him a prisoner “*out of the realm* ;” whereby the judges (so offending) become liable to all the penalties of the last supplemental *habeas corpus act* ; which is *treble costs*, and *500l. damages at the least* ; a disability to bear any office of trust or profit under the crown ; besides all the other

§ This truth is also farther testified by the arguments and authorities collected in *Bushel's case*, reported by *Ld C. J. Vaughan*, p. 156 :—viz. “*When a man is brought by HABEAS CORPUS to the court, and, upon return of it, it appears to the court that he was against law IMPRISONED and DETAINED, though there be no cause of privilege for him in this court, he shall never be by the act of the court REMANDED to his unlawful imprisonment, for then THE COURT should do an act of INJUSTICE, in imprisoning him, DE NOVO, AGAINST LAW ; whereas the great charter is, Quod nullus liber homo IMPRISONETUR, NISI PER LEGEM TERRÆ*,” &c.

tural equality, with respect to law, justice, and personal protection, which the Almighty

other penalties of a *premunire*, which the king cannot pardon! ¶

The plea of *necessity* for the service will not excuse them ; because that very plea in the very same case, *the necessity for the sea service, viz. for "the good and " safety of the kingdom in general, &c. and the whole king- " dom in danger"* (and a stronger or more urgent *necessity* cannot be expressed) ; yet it was deemed INSUFFICIENT to justify the opinion of all the judges in favour of extorting **SHIP-MONEY** (16 Cha. I. c. 14) ; and much more insufficient will it be to excuse the violent and forcible " *taking and imprisoning*" of **SHIP-MEN**, because the persons of men are infinitely more sacred in law than their pecuniary property : for it is an unquestionable maxim, that " *Law regards THE PERSON above his possessions.*" " *LIFE AND LIBERTY MOST,*" &c. (Prin. Leg. et

Æq.

¶ " — the person, or persons, who shall knowingly frame, contrive, write, seal, or counter-sign, ANY WARRANT" or writing "for such commitment, detainer," imprisonment, " or TRANSPORTATION ; or shall so commit, detain, imprison, or TRANSPORT, any person, or persons, contrary to this act ; or be ANY WAYS ADVISING, AID- " ING, OR ASSISTING, THEREIN" ; (which must inevitably include the act of REMANDING) ; " being lawfully convicted thereof, shall" (besides the penalties of treble costs and £. 500 damages, mentioned in the former part of the section) " be disabled from thenceforth to bear any office of trust or profit within the said realm of England, &c. and shall incur and sustain the pains, penalties, &c. in and by the statute of provision and *premunire*, &c.—and be INCAPABLE OF ANY PARDON FROM THE KING, his heirs, &c." — Stat. 31 Car. II. §. xii. And, by the x. §. a forfeit of 500l. is awarded against any judge for refusing the writ of **HABEAS CORPUS**, even though demanded in time of vacation.

Almighty himself has commanded to be maintained “ *without respect of persons* ;” that

Æq. p. 56.) And, as *the inheritance of the law*, by an established maxim already quoted, is said to descend “ *unicuique nostrum*,”—“ *to EVERY ONE of us*,” (without exception,) the **SEAMEN** are surely as much entitled to claim their *inheritance* and **RIGHT** to the whole benefit of the law as any other part of the **community**; for they cannot be excluded, because another excellent maxim says, “ *Turpis est pars quæ non
convenit cum suo TOTO.*” (Plowden, 161.) “ *Sbame-
ful is that part*” (of a **community**) “ *which is not
suited with its whole*” (body). So that, if **SEAMEN** are denied *the benefit and protection of the laws*, on the part of government, such a denial unavoidably tends to slacken and untie the *bands of allegiance* on the part of the seamen, who are thereby compelled to undertake their own protection and defence whenever *the law* is denied them; for the ties of allegiance must necessarily be reciprocal, according to the first principles of **social government**, because the protection of *natural right* is the *first foundation of English law*, which no act of parliament has any authority to *subvert*; and the useful order of **seamen**, in particular, cannot be denied *the protection of the law*, without the most stimulating provocation to resistance in their own defence: because it is agreeable to a fundamental maxim of the British constitution of state, that “ *Nothing is more ixt-
tolerable in law, than that any one part of the communi-
ty should be esteemed under a different law from the
rest,*”

that even an act of parliament cannot make it *lawful*; for “*God is no respecter of persons.*” (Acts x. 34) “*He accepteth not the persons of princes, nor regardeth the rich MORE THAN POOR; for they are all the work of his hands.*” (Job. xxxiv. 19.) “*He hath made the small and the great, AND CARETH FOR ALL ALIKE.*” (Wisdom, vi. 7.) And, with respect to *equal justice*, God’s direction to judges is part of the *moral law*, which is still binding,—“*they shall judge the people with JUST JUDGEMENT. Thou shalt not wrest judgement. Thou SHALT NOT RESPECT PERSONS; neither take*

I

“ a

“ *rest,*”* for there can be no such thing as “*common right*” wherever this is the case. —— Thus I have endeavoured to express the *right of seamen* in as plain and intelligible terms as I could; that every *common seaman of common sense* may be able to discern the *inestimable value* of his *best inheritance, THE LAW*; and I shall always esteem it *my duty to God* to maintain and defend their rights to the utmost of my power.

* “*Nihil in lege intolerabilius est, eandem rem diverso jure censeri;*” and another maxim says,—“*Turpis est pars quæ non convenit cum suo toto.*”

“ *a gift*,”* &c. (Deut. xvi. 18.) The fashionable *sneer*, therefore, of some modern lawyers, against the *just* doctrine concerning “ *the equality of mankind*,” savours of a lamentable ignorance in *the first principles* of their profession, relating to “ *common right*” or *justice*!

All

* According to the common law of England also, **BRIBERY**, or the *taking of gifts*, is esteemed a most *heinous crime* in **JUDICIAL PROCEEDINGS**; yet it is much more *heinous* (because more dangerous) in **LEGISLATION**: insomuch that a **JUST SUSPICION** of *undue influence* (by *private pensions*, *places held during pleasure*, &c.) is sufficient also to *vitiate* and *annul* the proceedings even of a **LEGISLATURE**! and therefore, when wicked and corrupt men, in the administration of any government, presume to varnish over their illegal proceedings with the specious pretence of “ *winding and establishing legislative authority*,” and yet, at the same time, (by sapping its honour and dignity with the baneful influence of *pensions*, and such other **BRIBERY**,) do notoriously practice the most effectual means to undermine and destroy it!—such men, I say, must be deemed *traitors* and *unpardonable hypocrites*, whom **NATIONAL JUSTICE** will mark for the future vengeance of a much *injured*, and, hitherto, “ **DELUSED PEOPLE**,” if they do not repent, before the measure of their iniquity be fulfilled, and heartily adopt some prudent plan of political reformation!

All that I have said against the *supposed* act for suspending the law, would be equally applicable to an act of parliament for impressing either seamen, or any other rank or denomination of British subjects: because it would be a real *suspension* (with respect to *one part* of the community) of all the most valuable acts of parliament which are deemed the pillars of the constitution, though the learned judge Foster has prostituted his pen by asserting that it is “ *not inconsistent with any statute.*” That learned man, surely, did not consider that the practice of impressing (as now carried on) necessarily includes the circumstances of “ *taking*” and “ *im-prisoning*” without “ *due process of the law;*” which is expressly prohibited not only by *one* statute, but by many *statutes.* The very first *statute* in our book ordains, that “ *No freeman shall be TAKEN or IMPRISONED, &c. but by the*

“ lawful judgement of his peers, or by the
 “ LAW OF THE LAND:” which, in a-
 nother recital, by *parliamentary authority*,
 is explained to signify “ *process of the*
 “ *law.*”—And another venerable statute
 (which, like *Magna Charta*, has been so
 frequently confirmed by other acts of
 parliament, in different periods, that *no*
 single parliament can have sufficient au-
 thority to repeal it) expressly ordains, that
 “ *No man, of what estate or condition that*
 “ *be be,*” (so that there can be no excep-
 tion of *SEAMEN*,) “ *shall be put out of*
 “ *land or tenements, nor TAKEN, nor*
 “ *IMPRISONED, nor disinherited,*” (and
 the protection of *THE LAW* is already
 shewn to be *our most valuable inheritance*,)
 “ *nor put to death, without being brought*
 “ *to answer by DUE PROCESS OF LAW.*”

Stat. 28 Ed. III. c. 3. This excellent
 statute, and the clause above quoted from
 the Great-Charter, are both *expressly re-*
cited and confirmed in the Bill of Rights,

(3 Cha. I. c. 1.) and also in the act for regulating the *privy-council*, (16 Cha. I. c. 10.)—So that judge Foster's assertion in favour of *pressing*, viz. that it is “*not inconsistent with any statute*,” is an unpardonable instance of *disingenuity*! For what “*due process of law*” can be pointed out to justify or warrant the *taking, imprisoning, and disinheriting*, (of his most valuable *inheritance, THE LAW*) an innocent sailor? — An *admiralty-warrant* cannot be considered as a “*due process of the law*,” to justify any such *taking, imprisoning, &c.* because it is founded on no other authority than that of “*the king and council*,” whose warrant, for any such purposes, is rendered totally *illegal* by authority of an act of parliament, still in force; (16 Cha. I. c. 10.) so that if a judge should presume to *remand* a man to confinement, that has been “*taken and imprisoned*” by any such *warrant*, (which is *illegal*, and of course no “*process*”

“ *cess of law*,”) he would be liable to an impeachment of *high-treason to the state* : for promoting an *illegal* power and pretension of the crown, in direct opposition to a *solemn act of the whole legislature* !

For the same reasons, every magistrate who presumes to *back a press-warrant* is also highly criminal, and makes himself an *adviser* and *party*, in a most notorious breach of the king’s peace! because the effect of promoting an *illegal* warrant, to *suspend* (as much as in him lies) the laws of the king’s peace, *common right*, and *personal protection*, from any of the king’s *subjects*, (and this even in the king’s *name*,) must necessarily *suspend* also, at the same time, the *allegiance* of the persons injured, for so a long time as they are in any actual danger; and they are permitted, even by the FIRST foundation

dation of the English law,* “ to repel force with force, and to defend themselves and their own property against UNJUST violence.” And they are not deemed guilty of *murder*, even if they *kill* the assailants, provided the *killing* be *inevitable* in their defence ; and that they cannot otherwise maintain their rights.— Nay, men are not only *justified* in defending *themselves* with force and arms, but may also legally *defend* and *rescue* any other person whatever, that is attacked or oppressed by an *unlawful violence*, though he be totally unknown to the rescuers !— For this was literally the case of Hopkins, Hugget, and three others, (an adjudged case in B. R. 18 Car. 2.) who, in attempting to *rescue* a stranger from the custody

* “ *Primum fundamentum legis Angliæ est lex RATIONIS.*”—*Doct. et Stud. c. 5.*—“ *Insuper lex rationis permittit plurima fieri, ut scilicet quod LICITUM EST vim vi repellere, et quod fas est UNICUIQUE*” (seamen not excepted) “ *se tueri, et rem suam defendere contra vim injustam.*” *Doct. et Stud. c. ii.*

custody of some *press-masters*, in Smith-field, happened to kill one of them.—
 “ *This was but man-slaughter*,” (says Ld. C. J. Holt,†) “ *for, when the liberty of*
 “ *the* *city* *was* *attacked* *by* *the* *king*’s *adversaries*, *the* *king*’s *privy* *council* *had* *given* *them* *such* *a* *warrant*, *as* *was* *sufficient* *to* *justify* *them* *in* *using* *such* *violence* *as* *was* *then* *necessary* *to* *defend* *the* *king*’s *privy* *council* *and* *the* *king*’s *cause*.”

† See his Report of “ *Regina versus Mervridge*,” published at the end of Ld C. J. Kelyng’s Reports, of which judge Holt was the editor. Some stress has been laid on the circumstance in the above case, that “ *the piece of paper*,” which the *press-masters* shewed to Hugget, &c. “ *was not a sufficient warrant*.” This is, indeed, readily allowed; and we may safely add, that, if the *lord admiral*’s *adversaries* had attended to assist his *press-masters*, his authority in this case would have been as insignificant as that of any other man; since the baneful clause of “ *Non obstante statute*” in the *lord admiral*’s *patent* is declared *null and void*; and, even if the *king*, at that time, and the *lords* of the *privy council* had *alio* attended in person, with the *BEST WARRANT* they could make, it would still have been “ *an insufficient warrant*” to justify any such violent attacks upon the liberty of innocent subjects! and the same *judgement* is now *most* *inevitably* *given* (supposing the *law* to be *DULY MAINTAINED*) as in the recited case: because the *meanest* *subjects* are as much entitled to the *protection* of the *law* as a *king* is to *his errors*, and consequently are *equally* justified in defending it, and in *resisting* *excessive* *force* with *force*, according to the *first* *several* *of* the *English law* as already recited. For it is a *maxim* in *law*, that “ *the king can order nothing*” (i. e. nothing *of*

“ one subject is invaded, it affects all the
“ rest: it is a provocation to all people, as

K

“ being

of legal process) “ except by a court legally appointed.” “ *Rex nil potest jubere nisi per curiam legitime constitutam.*” Now, as all pretence of legal power (in the capacity of a court of law) is taken from the king and council by express act of parliament, it would be absurd to attribute to their warrants and orders, or the admiralty press-warrants, (which are founded on no other authority,) the least legal authority as “ *a sufficient warrant*” to justify the taking and imprisoning any man whatsoever; because they are not, nor cannot be considered as, any part of “ *THE DUE PROCESS OF THE LAW,*” which alone can justify the taking and imprisoning British subjects! And, therefore, as press-gangs (officers as well as men) are manifestly employed in an *unlawful* business, acting *WITHOUT LAW*, there is no crime in beating, or even in killing, them, if they cannot otherwise be repelled, which must necessarily be deemed a *justifiable manslaughter*, “ *SE DEFENDENDO;*” because it is a maxim, that—“ *where there is NO LAW there is no TRANSGRESSION.*” “ *Ubi non est LEX ibi non est TRANSGRESSIO.*” And another maxim says: —“ *In vain doth that man implore the aid*” (or protection) “ *of LAW, who strives to subvert even the LAW itself.*” —“ *Frustra LEGIS auxilium implorat, qui LEGES IPSAS subvertit conatur:*” which must inevitably be deemed the case of press-gangs; insomuch that judge Foster himself (if he meant to act according to LAW) must have directed the jury to find the same verdict, in his famous reported case of *Alexander Broadfoot,*

" being of ill example and pernicious consequence."

In short, that excellent adage for all the ordinary circumstances of life, viz. "*Honesty the best POLICY,*" will be found to hold equally good in real *politics*, or affairs of government, even throughout the most dangerous and alarming difficulties and emergencies of state; because (if we entertain any real belief in divine Providence) examples may be produced, from the histories of all nations, to demonstrate, that the crafty refinements of mere *worldly policy* do frequently

Broadfoot, even if, instead of a *common sailor* belonging to the *press-gang*, *Broadfoot* had shot the lieutenant of the gang, or even the captain himself with the *admiralty warrant* in his hand; because the same *just objection* would still have held good against the *press-gang*, *viz.*—“*that they acted without legal warrant;*” for an *admiralty warrant*, to impress seamen, is *no legal warrant*, or “*process of the law,*” to take or *imprison* any man whatsoever:—and, therefore all the pains that have been taken, by that learned man, to *disguise* and *confound* the *true legal state* of the case, are *frivolous*, and *unworthy* his *rank and character!*

quently hasten or produce the very evils they were intended to avert! An administration of *government*, therefore, which cannot subsist with *law, justice, and common honesty*, is *unfit to subsist at all!* because *law* is the only basis of *good and lawful government*; so that no man can be esteemed truly *loyal* who thinks otherwise; and though several precedents for *suspending THE LAW* (both in pressing and other cases) may easily be produced; yet they can afford no justification or excuse for such measures; because the *iniquity* of them still remains, and “ *Malum quo communius eopejus;*” so that the citing *bad presidents* is a manifest aggravation of the *treason!* And it is a maxim,—that “ *PEACE IS THE LIFE OF THE COMMONWEALTH, LIBERTY THE SOUL OF IT, AND THE LAWS IT'S BODY.*” — “ *VITA REIPUBLICÆ PAX, ET ANIMUS LIBERTAS, ET CORPUS LEGES.*” — And, therefore, the hateful measure

measure of SUSPENDING THE LAWS, under a pretended *necessity* of carrying on a cruel WAR against the advocates for LIBERTY, ought to be deemed an attempt to destroy the LIFE, SOUL, and BODY, *of the republic!*

—“ Great is the TRUTH, and stronger
“ than all things;—it liveth and conquer-
“ eth for evermore. With her there is
“ no ACCEPTING OF PERSONS, or RE-
“ WARDS; she doeth the things that are
“ JUST, and refraineth from ALL UN-
“ JUST and WICKED THINGS. — Nei-
“ ther in her JUDGEMENT (or decree)
“ is any UNRIGHTEOUSNESS; and she is
“ the STRENGTH, KINGDOM, POWER,
“ and MAJESTY, of all ages!”

“ BLESSED BE THE GOD OF TRUTH!”



